

AMENDMENTS TO THE DRAWINGS:

Attached are seven (7) replacement sheets to replace the six (6) sheets of drawings currently of record.

Figs. 1 and 4 are amended to extend the lead line from reference 42 to the bodyside liner.

Fig. 2 is amended to add a lead line from reference number 66 in the upper left hand corner to the corresponding structure.

Fig. 3 has been amended to delete reference number 78 and the lead line corresponding thereto and to more clearly denote the rightmost reference number 46.

Fig. 6 has been amended to replace the text with reference numbers.

Fig. 7 is added herein.

All of the drawings have been amended to change the sheet numbers in correspondence with the addition of a new sheet of drawings.

REMARKS

Claims 19 and 21-23 are amended, claim 24 is canceled and new claim 25 is added by this amendment. Claims 1, 2 and 4-18 were previously canceled. Accordingly, upon entry of the present amendment, claims 3, 19-23 and 25 will be pending.

The amendments submitted herein are similar to those submitted previously in applicants' Amendment C After Final dated July 12, 2004, Amendment D After Final dated September 10, 2004, and Amendment E After Final dated November 10, 2004. Amendment C After Final was refused entry. Apparently Amendments D and E have never been acted upon. It is requested that Amendments D and E not be entered as those changes are picked up in the present Amendment F. This amendment is being filed with a Request for Continued Examination and an Information Disclosure Statement. This amendment is responsive to the final Office action of May 10, 2004.

This amendment and RCE application are being filed in place of an appeal brief. Accordingly, the appeal of this application is withdrawn. A check in payment of the fee to extend the time for filing the response is enclosed herewith.

Response to Objection to Drawings

Figures 1-4 have been amended in response to the objections raised in paragraph 3 of the final Office action.

Fig. 6 has been amended in response to the objections raised in paragraph 3 of the final Office action.

Figure 7 has been added herein to show certain features recited in the claims as required by paragraphs 2 and 4 of the final Office action of May 10, 2004. More particularly, Fig. 7 has been added to illustrate one of the loop fasteners 85 as comprising a nonwoven material attached to an elastic substrate whereby the nonwoven material is gathered. Gathering is clearly illustrated by the undulation of the nonwoven face 90. Support for the added drawing can be found at least at page 23, lines 8-

11; page 26, lines 22-25; page 27, lines 2-30; page 28, line 1 through page 29, line 27; and in the claims of the application as originally filed.

The amendments made to Figs. 1-4 and 6, and the addition of Fig. 7, are submitted to place the drawings as submitted herewith in proper form for allowance. It is noted that the Advisory Action of July 28, 2004 made no objection to the drawings as submitted herewith beyond the description of Fig. 7, which has been changed as discussed below.

Response to Objections to the Specification

In response to paragraph 5 of the final Office action, the Abstract has been amended to remove the term "said".

In response to paragraph 6 of the final Office action, Fig. 3 is amended herein to delete reference number 78 and the lead line extending therefrom. The paragraph at page 23, line 8 has also been amended as suggested in the final Office action to move the phrase "(designated 90 in Fig. 7)" from line 3 to line 4.

Additional amendments have been made to the specification to reference new Fig. 7 (at page 5 of the specification). These amendments do not add new matter as discussed above with regard to applicants' response to the drawing objections.

At paragraph 7 of the final Office action, the Office takes the position that the amendment to the paragraph at page 27, line 2 (at lines 25-31 thereof) made in applicants' Amendment B filed February 20, 2004 introduces new matter into the disclosure. Applicants respectfully disagree.

Two amendments are reflected in the passage cited by the Office as constituting new matter. The first relates to the deletion of the sentence "[s]uitable nonelastomeric retractive materials . . . polyether block amides (PEBAX) . . . ;" and to the subsequent addition of the polyether block amides (PEBAX) to the list of suitable elastomeric retractive materials. This

amendment was made to correct an obvious error in the specification; both the error and correction of which would be obvious to anyone skilled in the art. Polyether block amides are conventionally known elastomeric materials. A particularly well-known polyether block amide is known as PEBAX and is available from Atofina Chemicals, Inc. of Philadelphia, Pennsylvania. The undersigned invites the Office to visit Atofina's website at www.atofina.com for evidence that PEBAX is an elastomeric material and not a non-elastomeric material as originally (and erroneously) specified by applicants.

The second amendment is the addition of the term "elastomeric" after the trade designation LYCRA. The addition of the term elastomeric was in response to the Office's prior suggestion that generic descriptions follow trade designations. The sentence in question states that "[s]uitable elastomeric retractive materials," and further identifies LYCRA as one such elastomeric material. It is clear, then, that LYCRA is already called out in the specification as being an elastomeric material, with or without the addition of the term elastomeric following the trade designation LYCRA to generically describe the LYCRA material. However, should the Office maintain its assertion that addition of the term still constitutes new matter, applicants are willing to delete such term.

In view of the above, the specification is submitted to be in proper form for allowance.

Response to Rejection of Claims Under 35 U.S.C §112

Reconsideration of the rejection of claims 21-23 under §112 is respectfully requested. These claims are believed to be properly directed to the subcombination of the fastening system and the article on which the fastening system is mountable. The use of the phrase "in combination with" in a dependent claim to positively incorporate an element which was previously an unclaimed part of the environment is believed to be a

notoriously well-accepted practice. A search for the phrase "in combination with the article" in claims of issued U.S. patents on the Patent Office website yields more than 150 patents having some form of this phrase. Not all use it in the manner of claims 21-23, but many do. See for example claims 1, 6 and 7 of U.S. Patent No. 6,817,068 and claims 22 and 23 of U.S. Patent No. 6,739,107. These claims are very close in format to the present claims 21-23 in that they positively claim an environmental element introduced in a prior claim. There is no ambiguity, because the element simply becomes part of what must be found to infringe the claim.

If this rejection is to be maintained, the Examiner is requested to cite a more specific rule or caselaw that holds this widely used claiming practice to be unacceptable or somehow inherently unclear as to what is being claimed.

Response to Rejection of Claims Under 35 USC §102

Claim 19

Claim 19, as amended, is directed to a hook and loop mechanical fastening system for an article in which the loop component of the fastening system is mountable on the article and is capable of elastic stretching (e.g., elongating upon application of an elongating force and subsequent retraction upon removal or reduction of the elongating force) in at least two directions (e.g., a machine direction and a cross-machine direction of the loop component). In at least one of the directions the loop component is capable of stretching at least to two times its relaxed length. The loop component is constructed of a neck-stretched non-woven material attached directly to an elastic substrate that is elastically stretchable in at least two directions. The resulting loop component is also capable of elastic stretching in at least two directions.

Moreover as claimed (a mechanical fastening system), the loop component and hook component can be mated for secure engagement.

Specifically, claim 19 recites a mechanical fastening system for an article wherein the mechanical fastening system comprises:

a) a loop component mountable on the article and capable of elastic stretching in at least two directions, said loop component being capable of being elastically stretched in at least one of the directions at least about two times a relaxed length of the loop component, said loop component comprising a neck-stretched non-woven material and an elastic substrate, said elastic substrate being elastically stretchable in at least two directions, said non-woven material being attached directly to the elastic substrate; and

b) a hook component mountable on the article and capable of fastening engagement with the loop component to secure the article in a fastened configuration;

c) whereby when the hook component is juxtaposed and engaged with at least a portion of the loop component, the loop component is stretchable during limited movement of the loop component relative to the hook component.

Claim 19 is submitted to be patentable over the references of record, and in particular U.S. Patent No. 5,910,136 (Hetzler et al.), in that whether considered alone or in combination the references fail to show or suggest a mechanical fastening system including a loop component that is mountable on an article, capable of elastic stretching in at least two directions, and is elastically stretchable to at least twice a relaxed length in at least one of the directions, and is constructed of a neck-stretched non-woven material attached directly to an elastic substrate.

Hetzler et al. pertains to making a breathable, microporous film and laminate incorporating such a film. The patent has nothing to do with fastening systems generally or hook and loop

fasteners in particular. References to fastening systems and hook and loop materials are made only in passing and, as will be explained more fully hereinafter, do not disclose or suggest a loop component which capable of elastic stretching in at least two directions, and capable of stretching elastically to at least two times its relaxed length, as required by the claims of the present application.

Hetzler et al. disclose oriented polymeric microporous (e.g., breathable) films with flexible polyolefins. The film, or a breathable laminate constructed from the film, is disclosed as being useful in absorbent articles such as a diaper (80) as shown in Fig. 3, including using a non-woven portion of a laminate constructed from the film as the loop portion of a hook and loop combination. Hetzler et al. discloses a microporous film, i.e., a film having micropores so that the film is breathable. At column 3, line 47 through column 7, line 3, Hetzler et al. disclose the "flexible polyolefins" that can be used to initially form the film, and further disclose that the polyolefin resin may optionally include an elastomeric thermoplastic material.

Flexible polyolefins may in some forms retain a measure of elasticity, but they are not nearly as elastic as the claimed loop component. The flexible polyolefins of Hetzler et al. would almost certainly break if stretched to a length twice a relaxed length (as required by amended claim 19), or at least would not recover 50% of the amount by which the material was lengthened.

Moreover, there is a complete absence of any specific disclosure in Hetzler of a **loop component** that can be stretched in two directions. Hetzler et al. discuss several different laminates that can be made, but never specifically describe a loop component stretchable in two directions. To anticipate a claim, a particular reference must clearly and unequivocally disclose the claimed invention or direct those skilled in the

art to the invention without picking, choosing and combining various disclosures not directly related to each other by the cited reference. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972). In *Arkley*, the cited reference disclosed the precursors to the claimed compound, but did not disclose the compound itself. However, the court found nothing in the reference that clearly and unequivocally led one of ordinary skill in the art to take the steps needed to form the compound from the precursors. Accordingly, the claim was not anticipated by the cited reference.

As in *Arkley*, there is no explicit disclosure in Hetzler et al. of a loop component that is extensible in two directions and elastically stretchable in at least one of the two directions two times its relaxed length. The rejection is based on picking and choosing among disclosures that relate to the elastic substrate and disclosures that relate to various embodiments. Although use of one of the laminates as a loop component is mentioned in passing (col. 11, l. 22 - col. 12, l. 2), there is absolutely no indication that this particular laminate is capable of stretching in two directions. There is no disclosure that in the loop material version that the loop material can be elastically stretched to twice its relaxed length in at least one of the directions. There is no disclosure that the loop material is has as one of its elements a neck-stretched loop material. To make such a rejection, the Examiner must pick and choose among the various disclosures in Hetzler et al. (which we remind the Examiner is directed to producing breathable material, not a stretchable loop component) to reject claim 19. This stands in clear contradiction to *In re Arkley*.

None of the passages relied upon by the Office in paragraph 12 of the final Office action disclose the film and/or laminate as being elastically stretchable in multiple directions in its final (e.g., in use) form. The only passage in which the laminate is referred to as being stretchable at all is at column

9, lines 26-36. This does not disclose that if the support layer attached to the elastic substrate is suitable for use as a loop material that bi-directional stretching can be achieved. Further, there is no disclosure that if such stretching could be achieved, it would be elastic (i.e., able to recover at least 50% of the amount by which the material is stretched) if stretched to two times its relaxed length.

In view of the above, claim 19 is submitted to be unanticipated by and patentable over Hetzler et al.

Claim 3 and claims 20-23 and 25 depend directly or indirectly from claim 19 and are submitted to be unanticipated by and patentable over the Hetzler et al. and the other references of record for the same reasons as claim 19. In addition, claim 25 requires the loop component to be able to elastically stretch in at least one of the two directions 2.5 times its relaxed length. Hetzler et al. and the other references of record fail to show or suggest this additional feature. Accordingly, claim 25 is submitted as patentable for this additional reason.

Response to Rejection of Claims Under 35 USC §103

Applicants also request reconsideration of the rejection of claim 19 as being obvious in view of the combination of U.S. Patent No. 5,883,028 (Morman '028) with Hetzler et al. Specifically, applicants disagree with the Office's position that it would have been obvious in view of Hetzler et al. to use the breathable elastic film/non-woven laminate of Morman '028 to form a loop component of a mechanical fastening system for an article.

In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification. Obviousness can only be established by modifying

the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references or in the knowledge generally available to one of ordinary skill in the art. MPEP §2143.01 citing In re Kotzab, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). The mere fact that a prior art reference may be modified to obtain the claimed invention does not make the claimed invention obvious if there is no suggestion or motivation in the reference to make the modification. In re Mills, 916 F.2d 680, 682, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990). The prior art must provide one of ordinary skill the motivation to make the proposed modifications. In re Lalu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1984). Such motivation is clearly lacking in this case.

The essence of claim 19 is that by providing a loop component capable of elastic stretching in at least two directions, upon stretching during use only some of the engagement points between the hooks and loops are separated, and the some of the hooks are able to reattach to a different spot in the loop component as it contracts (thereby reducing pop opens of the fastening system). See, e.g., page 26, line 23 through page 27, line 1.

Both Morman '028 and Hetzler et al. pertain to breathable (microporous) laminates and have nothing to do with mechanical fastening systems. They do not disclose loop components usable with hook components to form a fastening system, in which the loop components are stretchable in two directions. Because the cited references are not directed to fastening systems, they also fail to recognize any advantage associated with a loop component stretchable in two directions and thus provide no suggestion for combination to produce a stretchable loop component.

Morman '028 discloses a breathable laminate comprising a non-woven web secured to an elastic film. The breathability of

the laminate renders it useful as an outer cover for diapers and other personal care products, and surgical gowns. See column 1, lines 49-53 of Morman '028. There is no disclosure or teaching found in Morman '028 of forming a loop component of a mechanical fastening system that is elastically stretchable in at least two directions.

Hetzler et al. disclose using the inelastic laminate disclosed therein as a loop component. However, there is no suggestion for making the inelastic loop component elastically stretchable in two directions, particularly where elasticity is maintained for stretching up to twice a relaxed length in at least one of the directions. Hetzler et al., do not recognize the desirability or advantage of any such construction.

There is no suggestion or teaching found in either Morman '028 or Hetzler et al. that would motivate one skilled in the art to replace the loop fastener of Hetzler et al. with the laminate disclosed by Morman '028. That such a replacement can be made does not render the replacement obvious. Rather, there must be some motivation found in the references to make such a replacement. None is provided by either of the references. That is, neither of the references teach the desire to provide a multi-direction elastically stretchable loop component to thereby increase engagement with the hook component. As stated previously, these references are concerned with producing breathable (microporous) laminates, not hook and loop fastening systems. Such motivation can only be improperly gleaned from the present application.

For these reasons, claim 19 is submitted to be non-obvious and patentable over the references of record.

Claims 3 and 20-23 and 25 depend directly or indirectly from claim 19 and are submitted to be nonobvious and patentable over the references of record for the same reasons as claim 19. In addition, claim 25 requires the loop component to be able to elastically stretch in at least one of the two directions 2.5

times its relaxed length. Hetzler et al., Morman '028 and the other references of record fail to show or suggest this additional feature. Accordingly, claim 25 is submitted as patentable for this additional reason.

CONCLUSION

In view of the above, applicants respectfully request favorable consideration and allowance of claims 3, 19-23 and 25 as now presented.

Respectfully submitted,



Kurt F. James, Reg. No. 33,716
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

CERTIFICATE OF MAILING

I certify that this Amendment F in the application of Popp, et al., Serial No. 10/038,818, filed December 31, 2001 is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on this 9th day of December, 2004.



Debra Staas

KFJ/dss